

Probate and Trust Accounting Problems

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COMMENTS

PROBATE AND TRUST ACCOUNTING PROBLEMS

INTRODUCTION

Although Wis. Stat. § 231.40 (1961) is entitled the "Uniform Principal and Income Act"¹ and is to "be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it,"² nevertheless, because the Wisconsin legislature only enacted portions of the Act and changed even those portions from the Act as promulgated by the Commissioners on Uniform State Laws,³ the title "Uniform" is an obvious misnomer. Due to the "patchwork" adoption of the Act in Wisconsin problems of interpretation exist throughout.

The initial impetus for the 1931 Act apparently came from fiduciaries who had apportionment and allocation problems when accounting to beneficiaries and supervisory courts.

Considerable demand for legislation on this subject came from several sources, particularly from trustees who were embarrassed in discharging their fiduciary duties by the large number of difficult and technical questions which arose in this connection and the conflicting opinions of the courts upon them.⁴

Despite the multitude of existing problems under the Wisconsin Act, professional fiduciaries appear to be satisfied with the Act.⁵ Perhaps this apparent satisfaction is present because the Act was designed to present a simple system of apportionment and allocation for both the executor and the trustee, even though not theoretically fair to all beneficiaries.⁶ Simplified rules of conduct for fiduciaries, however, may

¹ Wis. Stat. 231.40(10) (1961).

² Wis. Stat. 231.40(9) (1961).

³ The Uniform Principal and Income Act was approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1931. Historical Note, 9B U.L.A. 365 (1957). Wisconsin did not adopt the Act until 1957, Ch. 300, Laws of 1957, and then omitted five of the thirteen substantive law sections in the Uniform Act: §7 (Principal Used in Business); §8 (Principal Comprising Animals); §10 (Principal Subject to Depletion); §11 (Unproductive Estates); §13 (Expenses—Non-Trust Estates). In addition Wisconsin added a provision to §5(1) providing for capital gain distributions of mutual funds or investment companies) in Wis. Stat. 231.40 (5)(a) (1961); substantially changed §6 (Premium and Discount Bonds) in Wis. Stat. 231.40(6) (1961); substantially changed §12 (Expenses—Trust Estates) in Wis. Stat. 231.40(8) (1961); substantially changed §17 (Time of Taking Effect) in Wis. Stat. 231.40(12) (1961).

By Ch. 49, Laws of 1961 adding Wis. Stat. 231.40(3a) (1961), Wisconsin adopted with changes §3-A promulgated by the Commissioners in 1958, Historical Note, 9B U.L.A. 1961 Supp. 90. By Ch. 651, Laws of 1961, Wis. Stat. 231.40(5) (1961) was amended again presenting even greater nonconformity with the Uniform Act.

⁴ Commissioner's Prefatory Note, 9B U.L.A. 365 (1957).

⁵ The three major banks exercising trust powers in the Milwaukee area incorporate clauses in their suggested will forms to the effect that problems of interpretation are to be solved by resort to the Uniform Act.

⁶ For example §5 of the Uniform Act and Wis. Stat. 231.40(5) (1961) recog-

actually be more beneficial to the beneficiaries because the costs of estate and trust administration are reduced to a reasonable minimum.

The aim followed in the Act is that of as simple and convenient administration of the estate as is consistent with fairness to all beneficiaries. It is felt, too, that workable rules are after all nearest the settlor's probable intent, for he has not probably contemplated extensive and detailed bookkeeping adjustments of the property he has destined for his donees.⁷

Neither the executor nor the trustee need seek recourse to the Act unless the deceased settlor has not sufficiently manifested his intent as to whether a particular receipt or disbursement is to be dealt with as income or principal.

. . . the person establishing the principal may himself direct the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the trustee or other person to do so and such provision and direction, where not otherwise contrary to law, shall control notwithstanding this section.⁸

It must be noted that a special problem exists at this point for the executor. He need not seek recourse to the Act unless there has been either a legal life estate or a testamentary trust created by the will:

This section shall govern the ascertainment of income and principal, and the apportionment of receipts and expenses between tenants and remainderman, in all cases where a principal has been established with or, unless otherwise stated hereinafter, without the interposition of a trust; . . .⁹

If the will does not create a testamentary trust or a legal life estate, the Act does not appear to govern the conduct of the executor, except that, in determining what is net probate income the Act appears to govern in all cases, even where there has not been a legal life estate or a testamentary trust created.¹⁰

It has been suggested that by using the word *direct* the Act requires more than just display of intent.

This does not discount the importance of the settlor's intent but requires that it be expressed with sufficient definiteness to

nize the Massachusetts rule of awarding cash dividends on corporate stock to income and stock dividends to principal. The Pennsylvania rule, which was rejected, required fiduciaries to examine the declaring corporation's financial statements and allocate the dividend depending on its source. As one author stated: "On the whole, it was the belief of the draftsman, that it is better that the estate be administered on clear and definite principles than that complicated and involved accounting should be made necessary in a search for a theoretically more perfect rule." Staver, *The Uniform Principal and Income Act*, 21 ORE. L. REV. 217, 221 (1942).

⁷ *Supra* note 4 at 366.

⁸ §2 of the Uniform Act, Wis. Stat. 231.40(2) (1961).

⁹ Wis. Stat. 231.40(2) (1961).

¹⁰ Wis. Stat. 231.40(3a) (1961).

constitute a provision or direction to follow the procedure intended. The difference is one of degree rather than of principle.¹¹

At least two decisions indicate that for the intent of the settlor of the trust to prevail over the provisions of the Uniform Act, this intent must be specifically stated and be contrary to the provisions of the Act. The settlor in *In re Flecks estate*¹² provided that "any and all stock dividends or beneficial distributions to the Estate, as a stockholder, shall be treated as income, regardless of the effect the same may have upon the value of the security." The court interpreted this broad language quite strictly, treating stock splits, exchanges of stock on corporate reorganizations and "profit" on preferred stock called by the corporations as principal.

In *Stipe v. First National Bank of Portland*¹³ the settlor reserved "any and all dividends that may accrue or be declared upon the same, and that said beneficiaries shall have no right to receive any dividends from the earnings of said stock during the life of the said Arthur Stipe." The court construed "any and all dividends" as meaning nothing more than "income," thus the settlor did not reserve stock dividends for himself. Had the donor desired to reserve stock dividends for himself as income beneficiary "it was incumbent upon him by explicit directions, to indicate his intention and desire to retain all stock dividends."¹⁴ The court further declared:

The creation of the instant trust did not include a provision directing the manner of ascertaining the principal and income in any way at odds with the provisions of the Uniform Act, as he had a right to do if he so desired.¹⁵

Although these cases interpreted the Act in situations involving trusts, the same interpretation of the word "directs" must be given to the situation where a legal life estate has been created, if the same meaning should be given to the same word from the controlling section of a statute wherever the section is applied.

The challenge, therefore, is to the draftsman who must not rely on broad generalizations in language if he intends to overcome the statutory scheme of the Act, but should instead explicitly delineate the intent of the creator of the instrument. The Commissioners on Uniform State Laws appear to have relaxed the standard by which the creator of a trust instrument must manifest his intent at the 1962 National Conference where they approved the Revised Uniform Principal and Income Act. Section 2 is no longer approached from the

¹¹ Staver, *The Uniform Principal and Income Act*, 21 ORE. L. REV. 217, 225 (1942).

¹² 406 Pa. 363, 178 A.2d 574 (1962).

¹³ 208 Ore. 251, 301 P.2d 175 (1956).

¹⁴ 301 P.2d, at 185.

¹⁵ 301 P.2d, at 186.

"power of the settlor" but rather from the "duty of the trustee." Where under the 1931 Act the settlor had to "*direct* the manner of ascertainment of principal and income,"¹⁶ now under the 1962 Act, the trustee must administer "in accordance with the terms of the trust instrument, notwithstanding contrary provisions of this Act."¹⁷

Here a question arises for the executor as to whether the strict interpretation of the word "directs" as found in the 1931 Act still applies. The 1962 Act is not applicable to legal life estates. And, while it is the intention of the Commissioners on Uniform State Laws to propose a separate act governing legal life estates,¹⁸ it appears that, until such act is proposed, in any jurisdiction which decides to adopt the 1962 Act, the rules for determining allocations between a legal life tenant and remainderman must be determined by reference to the common law.

¹⁶ §2 of the Uniform Act, Wis. Stat. 231.40(2) (1961).

¹⁷ §2(a) (1) of the Revised Uniform Principal and Income Act. Bogert, The Revised Uniform Principal and Income Act.

¹⁸ 38 Notre Dame Law 50, 51 (1963).